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Insurance Corporation as Receiver

for Washington Mutual Bank

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
WASHINGTON MUTUAL BANK,

Plaintiff,

vs.

LENNAR MORTGAGE, LLC, as
successor to EAGLE HOME
MORTGAGE, INC. and UNIVERSAL

Case No.

**COMPLAINT FOR CONTRACTUAL
INDEMNITY**

COMPLAINT

1 AMERICAN MORTGAGE COMPANY
2 OF CALIFORNIA,

3 Defendant.

4 **INTRODUCTION**

5 1. Pursuant to identical written agreements, Eagle Home Mortgage, Inc.,
6 and Universal American Mortgage Company of California (each a “Broker” and
7 collectively “Brokers”) brokered mortgage loans for Washington Mutual Bank and/or
8 its subsidiaries, including Long Beach Mortgage Company (collectively, “WaMu”).
9 As part of their agreements, the Brokers promised to indemnify WaMu for any losses
10 which in any way arise out of or relate to an alleged act or omission of the Brokers.

11 2. During the relevant time period when the Brokers contracted with and
12 brokered loans to WaMu, Lennar Corporation operated using multiple financial
13 services subsidiaries, including the Brokers. Since that time, Lennar Corporation has
14 consolidated all of its financial services operations into a single subsidiary, Lennar
15 Mortgage, LLC (“Lennar Mortgage” or “Defendant”). As a result of this
16 consolidation, Lennar Mortgage became the legal successor to the Brokers.

17 3. After WaMu funded the loans from the Brokers, WaMu sold the
18 brokered loans into residential mortgage-backed securitized trusts (“RMBS Trusts”)
19 for which Deutsche Bank National Trust Company served as trustee (“Trustee”). The
20 Trustee ultimately asserted claims that it suffered losses because of defective loans
21 sold into the RMBS Trusts, including at least twenty-seven (27) mortgage loans
22 brokered by the Brokers (“Lennar Defective Loans”).

23 4. Plaintiff Federal Deposit Insurance Corporation as Receiver for WaMu
24 (“FDIC-R” or “Plaintiff”) incurred losses settling the Trustee’s claims. FDIC-R’s
25 losses arose out of and/or related to the Brokers’ acts or omissions, including, *inter*
26 *alia*, the Brokers’ representation of and assistance to borrowers, and collection,
27 preparation, and submission of loan applications and documentation that
28

1 misrepresented such things as the borrowers' credit histories, employment status,
2 income, or occupancy status.

3 5. FDIC-R demanded that Lennar Mortgage, as legal successor to the
4 Brokers, honor its written contractual indemnification obligation. Because Lennar
5 Mortgage has not honored its obligations, FDIC-R brings this action as successor to
6 WaMu's rights, titles, powers, and privileges.

7 **PARTIES, JURISDICTION, AND VENUE**

8 6. The Federal Deposit Insurance Corporation is an instrumentality of the
9 United States and is organized and exists under the laws of the United States. 12
10 U.S.C. §§ 1811, 1821(d). Pursuant to 12 U.S.C. § 1821(d)(2), FDIC-R succeeded to
11 all rights, titles, powers, and privileges of WaMu and of any stockholder, member,
12 account holder, depositor, officer, or director of WaMu with respect to the bank and
13 its assets. FDIC-R brings this action in its capacity as the duly appointed receiver of
14 WaMu, which the Office of Thrift Supervision closed on September 25, 2008,
15 appointing FDIC as Receiver for WaMu that same day.

16 7. Lennar Mortgage is a Florida limited liability company with its principal
17 place of business in Miami, Florida. Lennar Mortgage is registered and licensed to
18 do business in California and transacts business from branch offices in Valencia,
19 California; and Corona, California.

20 8. Eagle Home Mortgage, Inc. was a Washington corporation with its
21 principal place of business in Kirkland, Washington. At all relevant times, Eagle
22 Home Mortgage, Inc., was a financial services subsidiary of Lennar Corporation. On
23 October 1, 2006, Eagle Home Mortgage, Inc., merged into Eagle Home Mortgage,
24 LLC, another financial services subsidiary of Lennar Corporation. Since that time,
25 Eagle Home Mortgage, LLC, and Lennar Mortgage have shared common directors,
26 officers, personnel, and assets, including Lennar Mortgage's use of the trade name
27 "Eagle Home Mortgage" as an assumed business name in multiple jurisdictions.
28 Eagle Home Mortgage, LLC, subsequently became inactive. Lennar Mortgage is the

1 legal successor to Eagle Home Mortgage, LLC, as the mere continuation of Eagle
2 Home Mortgage, LLC, or as a result of the *de facto* merger of Eagle Home Mortgage,
3 LLC, into Lennar Mortgage.

4 9. Universal American Mortgage Company of California was a California
5 corporation with its principal place of business in Corona, California. At all relevant
6 times, Universal American Mortgage Company of California was a financial services
7 subsidiary of Lennar Corporation. Effective June 5, 2017, Universal American
8 Mortgage Company of California changed its name to Eagle Home Mortgage of
9 California. Eagle Home Mortgage of California merged into Lennar Mortgage
10 effective August 10, 2019. Lennar Mortgage is the legal successor to Universal
11 American Mortgage Company of California by merger.

12 10. This Court has subject-matter jurisdiction pursuant to 12 U.S.C.
13 § 1819(b)(1) and (2) and 28 U.S.C. §§ 1331 and 1345.

14 11. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a
15 substantial part of the events or omissions giving rise to this claim occurred in this
16 judicial district because, among other things, the contractual business relationship was
17 entered into by Universal American Mortgage Company of California in this district
18 and the place of performance for all or some of the obligations sued upon was in this
19 district. Venue is also proper in this district pursuant to 28 U.S.C. § 1391(b)(1), (c)(1)
20 because Defendant is subject to this Court's personal jurisdiction with respect to this
21 civil action in this district, and therefore Defendant "resides" within this district for
22 venue purposes.

23 **FACTUAL ALLEGATIONS**

24 12. WaMu was a federal savings bank that, directly or through affiliates
25 and/or subsidiaries, among other things, purchased, funded, and sold mortgage loans
26 to investment trusts that packaged loans into securities for investors, which are
27 generally known as residential mortgage-backed securities.
28

1 13. On information and belief, the Brokers engaged in the business of
2 brokering, originating, processing, packaging, submitting for funding, selling and/or
3 transferring loans secured by real property.

4 **A. Brokers' Contractual Obligations**

5 14. The Brokers and WaMu had contractual business relationships governed
6 by mortgage broker agreements, including the Mortgage Broker Agreement entered
7 into by Eagle Home Mortgage, Inc., on May 6, 2005, attached hereto as Exhibit 1,
8 and a substantially identical Mortgage Broker Agreement entered into by Universal
9 American Mortgage Company of California on September 30, 2005, attached hereto
10 as Exhibit 2 (collectively, the "Agreements").

11 15. The Brokers agreed that they would each prepare, package, and submit
12 loan applications on behalf of loan applicant borrowers seeking WaMu loans. The
13 Brokers were responsible for, among other things, representing loan applicants in
14 locating lenders; interacting directly with and interviewing the borrowers, counseling
15 and assisting the borrowers in the financing process; choosing the loan product with
16 the borrowers; collecting relevant information and documentation in support of the
17 loan applications; preparing the loan applications and submission packages; and
18 submitting the completed loan packages to WaMu.

19 16. The Brokers were compensated for any loans funded by WaMu.

20 17. Pursuant to the Agreements, each Broker expressly agreed to indemnify
21 WaMu as follows:

22 [Broker] agrees to indemnify, hold harmless, and defend [WaMu] . . .
23 from and against any and all losses, claims, demands, damages,
24 expenses or costs (including, but not limited to, reasonable attorneys'
25 fees and costs incurred by [WaMu], with or without suit) which in any
26 way arise out of or relate to an alleged act or omission of [Broker] . . .
27 in connection with an Applicant, an Application Package, a Mortgage
28 Loan, or this Agreement. Ex. 1 ¶ 6; Ex. 2 ¶ 6.

1 **B. The Lennar Defective Loans**

2 18. Pursuant to the Agreements, the Brokers brokered the 27 Lennar
3 Defective Loans summarized on Exhibit 3, which is incorporated by reference and
4 attached hereto.

5 19. As noted above and set forth in more detail below, the Trustee asserted
6 claims against FDIC-R based on alleged breaches of WaMu's representations and
7 obligations concerning the quality and characteristics of the loans, the borrowers, and
8 the collateral on certain loans sold into the RMBS Trusts, including the Lennar
9 Defective Loans. Accordingly, FDIC-R incurred losses in connection with the Lennar
10 Defective Loans.

11 20. The Brokers prepared and submitted loan applications and materials for
12 the Lennar Defective Loans that contained misrepresentations relating to the quality
13 and characteristics of the loans, the borrowers, and the collateral, *inter alia*.

14 21. As an example, the loan documents for borrowers BL and PL contained
15 numerous deficiencies, inaccuracies, and material misrepresentations. Eagle Home
16 Mortgage prepared and submitted loan application documents for BL and PL that
17 misrepresented their monthly earnings as \$60,000, more than six times their *actual*
18 monthly earnings. In addition, the documents that Eagle Home Mortgage submitted
19 further overstated BL and PL's ability to repay the requested loan by failing to
20 disclose that BL and PL had incurred over \$660,000 in new mortgage debt on two
21 properties purchased just prior to the subject property.

22 22. As another example, Universal American Mortgage Company of
23 California prepared and submitted loan application documents for two loans for
24 borrowers ML and AD that misrepresented ML and AD's ability to repay the loan by
25 misrepresenting that their monthly earnings were \$9,796, which was more than six
26 times their *actual* earnings. In addition, the applications that Universal American
27 Mortgage Company of California submitted misrepresented that the property would
28

1 be ML and AD's primary residence, but, in fact, ML and AD resided at another
2 property and did not reside at the purchased property as a primary residence.

3 23. Taken together, the 27 Lennar Defective loans include, *inter alia*, loans
4 with undisclosed and/or misrepresented mortgage loan obligations, loans with false
5 or misleading rental credit histories, loans with false employment histories, loans with
6 inaccurate appraisals, and loans with false occupancy representations and
7 certifications.

8 **C. WaMu's Sale of the Lennar Defective Loans to the RMBS Trusts**

9 24. After WaMu funded the Lennar Defective Loans, WaMu sold each of
10 them to the RMBS Trusts.

11 25. In connection with such sales, and in reliance on the materials,
12 representations, obligations, and remedies the Brokers provided to WaMu, WaMu
13 provided representations, obligations, and remedies to the RMBS Trusts regarding the
14 quality and characteristics of the loans, the borrowers, and the collateral. With respect
15 to defective loans, WaMu was liable to the RMBS Trusts, *inter alia*, where there was
16 a material misrepresentation or omission in a loan application or other supporting
17 documentation.

18 **D. The Trustee Action and FDIC-R's Settlement with Trustee**

19 26. After WaMu failed, on December 30, 2008, the Trustee filed a proof of
20 claim with FDIC-R asserting that WaMu breached representations and warranties in
21 connection with the loans sold to various RMBS Trusts. On August 26, 2009, Trustee
22 filed a lawsuit in the District Court for the District of Columbia against FDIC-R for
23 losses resulting from such loans that WaMu sold to the RMBS Trusts, including the
24 Lennar Defective Loans.

25 27. FDIC-R defended itself against the claims in the Trustee's lawsuit and
26 eventually settled with the Trustee.

27 28. Pursuant to a settlement agreement with an effective date no earlier than
28 September 5, 2017, FDIC-R and the Trustee settled claims against FDIC-R, including

1 representation and warranty breach claims arising out of or relating to the Lennar
2 Defective Loans. On September 5, 2017, FDIC-R paid the \$3,006,929,660
3 Receivership Certificate to the Trustee in settlement of Trustee's claims, including
4 claims on the Lennar Defective Loans. Settlement of the Trustee's claims for that
5 court approved amount was objectively reasonable. FDIC-R's indemnification claims
6 are timely because they are brought within six years of the date of accrual. 12 U.S.C.
7 § 1821(d)(14).

8 29. FDIC-R was liable for the losses due to breaches of WaMu's
9 representations and obligations concerning the quality and characteristics of the loans,
10 the borrowers, and the collateral on certain loans sold into the RMBS Trusts, which
11 loans included the Lennar Defective Loans. The Trustee asserted that FDIC-R was
12 contractually responsible for breaches of representations and warranties including,
13 *inter alia*: misrepresentations, negligence, or fraud that occurred in the origination of
14 the loan; appraisals that were inconsistent with underwriting guidelines;
15 misrepresentations of income; and loan-to-value ratios that exceeded 100 percent.
16 Given the Brokers' roles and conduct in connection with the Lennar Defective Loans,
17 including the Brokers' relationships to the borrowers and their preparation, gathering,
18 and submission of loan applications and documentation, FDIC-R's liability to the
19 Trustee and loss arose out of or related to the Brokers' acts or omissions in connection
20 with an Applicant, an Application Package, a Mortgage Loan, or the Agreement.

21 **E. Lennar Mortgage's Breach of the Indemnification Obligations**

22 30. On June 23, 2021, FDIC-R sent a demand letter to Lennar Mortgage
23 seeking indemnification for its losses arising out of and/or related to Eagle Home
24 Mortgage's acts and omissions in connection with the Lennar Defective Loans. On
25 February 3, 2022, FDIC-R sent a demand letter to Lennar Mortgage seeking
26 indemnification for its losses arising out of and/or related to Universal American
27 Mortgage Company of California's acts and omissions in connection with the Lennar
28

1 Defective Loans. Lennar Mortgage has not honored its obligation to indemnify under
2 the Agreements.

3 31. The Agreements provide that the prevailing party in any action to enforce
4 it may recover its reasonable attorneys' fees. In order to enforce FDIC-R's rights
5 under the Agreements, FDIC-R has retained outside counsel and agreed to pay
6 reasonable attorneys' fees. In addition, FDIC-R has assigned in-house counsel to
7 assist in actively preparing to bring this case to trial.

8 32. All conditions precedent to the relief sought in this action have been
9 fulfilled.

10 **CLAIM FOR RELIEF**

11 **(Contractual Indemnification)**

12 33. Plaintiff FDIC-R incorporates by reference the allegations set forth
13 above as though set forth fully herein.

14 34. The Agreements are valid and enforceable contracts.

15 35. Plaintiff substantially performed all its obligations under the Agreement.

16 36. FDIC-R is entitled to indemnification from Lennar Mortgage, as legal
17 successor to each of the Brokers, for losses FDIC-R suffered settling the Trustee's
18 claims, arising out of or relating to the Brokers' acts or omissions in connection with
19 the Lennar Defective Loans.

20 37. Lennar Mortgage breached its obligations to indemnify FDIC-R,
21 resulting in damage to FDIC-R in an amount to be proven at trial.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff FDIC-R respectfully requests that it be granted:

- 24 A. A judgment against Lennar Mortgage in an amount to be proven at trial
25 for its breach of its indemnification obligations;
- 26 B. Pre-judgment interest under 12 U.S.C. § 1821(l) or applicable state law;
- 27 C. Reasonable attorneys' fees;
- 28 D. Costs and expenses; and

1 E. Any other relief as the Court deems just and proper.

2 DATED: August 11, 2023 MARK MIGDAL & HAYDEN

3
4 By: /s/ Paul A. Levin

5 Paul A. Levin

6 Attorneys for Plaintiff Federal Deposit Insurance
7 Corporation as Receiver for Washington Mutual
8 Bank

9 DATED: August 11, 2023 MORTGAGE RECOVERY LAW GROUP, LLP

10
11 By: /s/ Michael H. Delbick

12 Michael H. Delbick

13 Attorneys for Plaintiff Federal Deposit Insurance
14 Corporation as Receiver for Washington Mutual
15 Bank

16 DATED: August 11, 2023 FEDERAL DEPOSIT INSURANCE
17 CORPORATION

18
19 By: /s/ Joshua H. Packman

20 Joshua H. Packman (to seek admission pro hac vice)

21 Attorneys for Plaintiff Federal Deposit Insurance
22 Corporation as Receiver for Washington Mutual
23 Bank